

**Conflicts Coordinator Report to the Montana Public Defender Commission  
August 31, 2006**

Kerry Newcomer  
Conflicts Coordinator  
619 Southwest Higgins, Suite K  
Missoula, MT 59803  
Phone: 406.880.0771  
Alt. Phone: 406.728.4950  
Fax: 406.327.0771  
[k.newcomer@gm-law.com](mailto:k.newcomer@gm-law.com)

**1. Overall job description:** The Conflicts Coordinator, under the direct oversight of the Montana Public Defender Commission (PDC), is responsible for assisting conflict attorneys in securing payment for legal services directly relating to the delivery of case resources. [*Standards for Counsel, III., F., 1.*]

**2. Functions of Conflicts Coordinator:**

- A. Files written financial reports monthly and as directed with the PDC. [*Standards, III., F., 2.*]
- B. If requested by the PDC, provides reports to the PDC to assist the PDC in evaluating the work of attorneys providing conflict services. [*Standards, III., F., 2.*]
- C. Handles only administrative functions unrelated to the direct provision of legal services to clients. [*Standards, III., F., 5.*]
- D. Verifies, approves or denies bills for services or resources for conflict cases submitted to the Conflicts Coordinator. [*Standards, III., F., 6.; Commission Minutes 07/31/06*]
- E. Verifies, approves or denies all expenditures requested by conflict counsel, only to ensure compliance with State disbursement procedure and promote sound fiscal practices. [*Standards, III., F., 7.; Commission Minutes 07/31/06*]

**3. Report to the PDC for August 2006:**

**A. Financial Report:**

- i. Number of conflict cases: unknown  
By region: unknown
- ii. Cost for attorneys' fees: unknown

By region: unknown

iii. Cost for other services: unknown

By region: unknown

**UPDATED** The overall conflicts case information is not yet available. As of August 28, 2006, the Accounts Payable Unit at the OPD Central Office continues to process contract attorney and miscellaneous service provider claims for July. I understand that the delay in processing, and therefore reporting, is due to the fact that all client, attorney and OPD coding must be entered for the first time, for both pre and post July 1 cases. It is expected that much of this information will carryover and that processing for future months will be faster. In my report of July 31, 2006, I expected to include this information for July in this report.

**UPDATED** iv. Cost of Conflicts Coordinator:

July, 2006:	Prof. time	61.4 hours @ \$60.00	\$3,684.00
	Travel time	8.6 hours @ \$60.00	516.00
	Travel time	5 hours not billed	0.00
	Staff assignable time:	None	0.00
	Total time		<u>\$4,212.00</u>
	Overhead stipend (to be billed and paid with August invoice)		100.00
	Mileage	860 @ \$.445	<u>382.70</u>
	Total time and direct costs		<u>\$4,694.70</u>

The OPD paid for attendance and lodging at the July training seminar and for airfare and lodging to attend the July 31 PDC meeting at Miles City.

August, 2006 through the 28 <sup>th</sup> :	Prof. time	51.95 hours @ 60.00	\$3,117.00
	Staff assignable time:	8 hours	<u>480.00</u>
	Total time through 8/28		<u>\$3,597.00</u>
	Overhead stipend for August		<u>100.00</u>
	Total time and direct costs through August 28		<u>\$3,697.00</u>

**UPDATED**

B. **Evaluation of conflict attorney work.** No evaluations or reports have been requested. I expect to work with Larry Murphy, Contracts Manager, to develop billing practices guidelines to further address what expenses are separately allowable and how and for what purpose attorney (and under what circumstances staff) time may be charged. For example, when the OPD will pay for a second chair at trial. Another example related to

trials is whether or not other staff or investigators will be paid to manage exhibits or witnesses.

At the July 31 meeting, coordinating evaluation of attorney work with Jim Wheelis, Chief Appellate Defender, was discussed. I have not taken action on this item yet, but I will start this discussion with Wheelis, Eric Olson, Larry Murphy and Randi Hood in September.

**C.-E. Conflict case administration.**

**i. Goals:**

- a. Establish a *system* for administration and oversight of conflict cases that is independent of case supervision by Office of the State Public Defender (OPD) to ensure independence of action by conflict case counsel and to prevent inadvertent disclosure of conflict client confidences and case strategy.
- b. The conflict case system should create the least additional work for conflict client counsel as is possible while achieving the prior goal. Payment for services should be at least as fast as will occur for cases administered by the OPD. Authorization for non-attorney services should occur within one business day for tasks expected to cost less than \$2,000, and within two business days for tasks expected to be \$2,000 or more.
- c. To ensure timely and efficient delivery of services to the clients by having a short path to assignment of conflict attorneys and speedy authorization of needed services.
- d. To organize the system for administration and oversight of conflict cases so that it integrates with the OPD to allow for a consistent presentation of case load, resource deployment and needs analysis by the OPD.

**ii. Actions taken:**

**NEW**

- a. **Photocopying and telephone out of pocket expenses.**  
I've expressed my views regarding the potential to discourage attorney-client communication inherent in the \$25.00 per month stipend provision in the standard Memorandum of Understanding used for contract attorneys. This view was forwarded to the Commissioners by email by Chairman Taylor. Since that time, the view of what telephone and photocopying expenses are allowed in

addition to the \$25.00 per month stipend has been clarified by Mr. Murphy, the Contracts Manager. This clarification adequately resolved my concern. No further consideration is requested.

- b. I've continued to collaborate with Larry Murphy, OPD Contracts Manager, and Sandra Law, OPD Financial Manager, on the implementation of payment and authorization flow for conflicts cases.

**UPDATED**

- c. I have not made any progress on standards and procedures relating to a conflict case system and how a system might be organized. I will gather procedure manuals from other state systems and review them in September and October. I expect to meet with OPD Central Office staff to see if we can integrate proposal options for conflicts case management for the Commission's consideration.

**UPDATED**

- d. I've answered questions from counsel, met with attorneys, reviewed invoices submitted for payment, considered and acted on requests for preapproval of case expenses. When I thought it necessary, I have questioned counsel about the work reflected on their invoices. These functions have taken most of my time during the last 30 days. I accompanied Ed Sheehy, RDPD and Eric Olson, Training Coordinator, to a meeting with the Ravalli County District Court Judges concerning a problem related to substitution of counsel due to an apparent conflict of interest.

**NEW**

- e. I received a client grievance from contract attorney client and two conflict contract attorney client grievances via Kristina Neal, RDPD. I forwarded the grievants' information to Eric Olson for follow-up after a client grievance procedure established. Outcome unknown.

**4. Proposed Work for Next 60 days (all items not yet completed):**

- A. Continue to work the system as set up and evaluate for bottlenecks. Make changes as required.
- B. Evaluate the workload for the Conflicts Coordinator position.
  - i. How much time does it take and for what functions?
  - ii. What parts of the position should be done by attorneys or by staff.

- C. Reevaluate system design based upon:
  - i. Policies and procedures being proposed and implemented by OPD at the regional and central office levels.
  - ii. Reported problems.
  - UPDATED** iii. Additional information from other state systems design and operation and state and national standards. Examine how multiple conflicts are handled.
- D. Research and recommendations to the PDC as directed. As mentioned above, I expect to be able to provide the PDC with some guidance with respect to how other states implement their conflict case management.
- E. Collaborate with OPD Central Office to establish policies that support the determination of when conflicts exist and that minimize the opportunity for inadvertent disclosure of confidential client information. An example of this is a closed file policy.
- F. Collaborate with OPD Central Office to make OPD resources available to conflict counsel in a way that minimizes the risk of inadvertent disclosure of confidential client information. An example of this would be to use an investigator from an adjoining region on a conflict case.
- NEW** G. Develop billing practice guidelines to further address what expenses are separately allowable and how and for what purpose attorney and (under what circumstances staff) time may be charged.
- NEW** H. Develop proposed review guidelines, policy or procedure for initiating an attorney performance review.

**5. Action or Authority requested from the PDC:**

- NEW** A. I request authority to use the attached letterhead; see *Exhibit 1*.

[end]

# PUBLIC DEFENDER COMMISSION



BRIAN SCHWEITZER  
GOVERNOR

KERRY NEWCOMER  
CONFLICTS COORDINATOR

## STATE OF MONTANA

Phone: (406) 880-0771  
Fax: (406) 327-0771

619 SOUTHWEST HIGGINS, SUITE K  
MISSOULA, MONTANA 59803

**Exhibit 1**